

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number:

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Date:
April 09, 2007

In Re:

Legend:

- Grantor =
- Daughter =
- Son =
- Trust =

- Daughter's Trust =
- Son's Trust =
- Court =

- State Statute 1 =
- State Statute 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- A =
- B =

Dear _____ :

This is in response to your letter dated January 22, 2007, submitted by your authorized representatives, requesting rulings under § 2601 of the Internal Revenue Code.

The facts submitted and the representations made are summarized as follows. On Date 1, Grantor established an irrevocable trust (Trust) for the benefit of his sister-in-law, cousin, the issue of his son (Son), and the issue of his daughter (Daughter). Grantor supplemented the original corpus of Trust on Date 2. Date 1 and Date 2 are prior to 1955.

Article One of Trust provides that during the lives of Grantor's sister-in-law and cousin four-fifths of Trust's income not to exceed \$A is to be distributed annually to Grantor's sister-in-law and one-fifth of Trust's income not to exceed \$B is to be distributed annually to Grantor's cousin. In the event of illness, incapacity, or emergency the trustee may distribute income exceeding \$A and \$B to Grantor's sister-in-law and cousin. Prior to the earlier of the death of Grantor's sister-in-law, cousin, or Date 3, net income not distributed is to be accumulated and added to principal. After the earlier of the death of Grantor's sister-in-law, cousin, or Date 3, net income not distributed is to be distributed to the issue of Son and Daughter in the manner described in Articles Three and Four of Trust. Date 3 is prior to 1985.

Article Two of Trust provides that upon the last to die of Grantor's sister-in-law and cousin, the Trust's assets are to be divided into two trusts, Daughter's Trust and Son's Trust. One-third of the Trust's assets are to be distributed to Daughter's Trust and two-thirds of the Trust's assets are to be distributed to Son's Trust. Grantor's sister-in-law died on Date 4, and Grantor's cousin died on Date 5.

Under Article Three of Trust, all of the net income of Son's Trust is to be distributed annually to Son's children (grandchildren of Grantor), per stirpes. Son's Trust is to terminate 20 years after the death of Son and four other named persons. Article Three further provides that if Son and all of his issue die prior to the termination of Son's Trust, then the trust estate is to be distributed to Daughter's Trust and administered in accordance with Article Four of Trust. Article Six provides that, if all of the descendants of Son and Daughter die before the Trust terminates, the trust corpus is to be divided among certain named beneficiaries.

Currently, Son is alive but the four other persons named in Article Three who are the measuring lives of Son's Trust have died. Therefore, the termination date of Son's Trust is unknown.

Under Article Four of Trust, all of the net income of Daughter's Trust is to be distributed annually to Daughter's children (grandchildren of Grantor), per stirpes. Daughter's Trust

is to terminate 20 years after the death of Daughter and four other named persons. Article Four further provides that if Daughter and all of her issue die prior to the termination of Daughter's Trust, then the trust estate is to be distributed to Son's Trust and administered in accordance with Article Three of Trust. Article Six provides that, if all of the descendants of Son and Daughter die before the Trust terminates, the trust corpus is to be divided among certain named beneficiaries.

Daughter and the four other persons named in Article Four who are the measuring lives for Daughter's Trust have died. Therefore, the termination date of Daughter's Trust is Date 6.

It has been represented that there have been no other additions (actual or constructive) to Trust, Son's Trust, or Daughter's Trust since Date 2.

Son has four children and four grandchildren all of whom are alive. Two of the grandchildren are minors. Daughter had three children, two of whom are alive, and four grandchildren. The deceased child of Daughter is survived by two children both of whom have reached the age majority. The other two grandchildren are minors. Therefore, the current income and remainder beneficiaries of Son's Trust are Son's four children and the current income and remainder beneficiaries of Daughter's Trust are Daughter's two children and the two children of Daughter's deceased child.

State Statute 1 provides that upon the application of the trustee or a beneficiary of a trust, a court can terminate a trust if the purposes of a trust have been fulfilled or have become illegal or impossible to fulfill; if because of circumstances not known to or anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust; or if a material purpose of the trust no longer exists.

On Date 7, a beneficiary of Son's Trust petitioned Court to terminate Son's Trust and Daughter's Trust. All of the current income and remainder beneficiaries of Son's Trust and Daughter's Trust consented to the early termination. Under State Statute 2, an unborn or unascertained person, or a minor, who is not otherwise represented is bound by an order to the extent that that person's interest is represented by another party having the same or greater quality of interest in the proceeding. Each great grandchild consented by either directly executing a consent or indirectly by his or her parent or guardian executing a consent. Finally, all of the contingent beneficiaries of Son's Trust and Daughter's Trust listed in Article Six of Trust either consented or did not object to the early termination.

On Date 8, Court issued an order terminating Daughter's Trust and Son's Trust subject to the receipt of a favorable private letter ruling from the Internal Revenue Service. Upon the termination of Son's Trust, the trust estate will be distributed to Son's four

children in equal shares. Upon the termination of Daughter's Trust, the trust estate will be distributed one-third each to Daughter's two surviving children and one-sixth each to the two children of Daughter's deceased child.

The trustee of Son's Trust and Daughter's Trust has requested a ruling that the termination of Son's Trust and Daughter's Trust will not cause Trust, Son's Trust, or Daughter's Trust to lose their generation-skipping transfer (GST) tax exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act).

Law and Analysis:

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of Subchapter B).

Under § 1433(a) of the Act, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would cause the trust to be included in his or her gross estate under §§ 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

In the present case, Trust was irrevocable on September 25, 1985, and no additions (actual or constructive) have been made to Trust, Son's Trust, or Daughter's Trust after Date 2, a date that is prior to 1955. Under State Statute 1, a trust may be terminated if a material purpose of the trust no longer exists. A material purpose of Trust was to provide for Grantor's sister-in-law and cousin and both of these individuals have died.

In the proceeding seeking termination of Son's Trust and Daughter's Trust, all of the income and remainder beneficiaries were represented. The remote contingent beneficiaries either consented or did not object to the termination. Thus, the proposed termination of each trust is valid under state law.

Furthermore, the proposed termination of Son's Trust and Daughter's Trust will not result in a shift of any beneficial interest in Trust, Son's Trust, or Daughter's Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the proposed termination and the proposed termination will not extend the time for vesting of any beneficial interest in Trust, Son's Trust, or Daughter's Trust beyond the period provided for in Trust.

Accordingly, based on the facts submitted and the representations made, we conclude that the proposed termination Son's Trust and Daughter's Trust will not cause Trust, Son's Trust, or Daughter's Trust to lose their exempt status under § 1433(b)(2)(A) of the Act.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan

James F. Hogan
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes

cc: